

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 918

Introduced by Bromm, 23

Read first time January 9, 2002

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to transportation and telecommunications; to
2 amend sections 28-515, 70-301, 75-117, 86-306, 86-307,
3 and 86-329, Reissue Revised Statutes of Nebraska, section
4 75-137, Revised Statutes Supplement, 2000, and section
5 75-132.01, Revised Statutes Supplement, 2001; to state
6 the subject matter jurisdiction and enforcement of the
7 Public Service Commission; to change the terminology for
8 certain motions before the Public Service Commission; to
9 provide, transfer, change, and eliminate penalties; to
10 harmonize provisions; to provide duties for the Revisor
11 of Statutes; to provide an operative date; to repeal the
12 original sections; and to outright repeal sections 86-208
13 to 86-211, 86-330, and 86-331, Reissue Revised Statutes
14 of Nebraska.
15 Be it enacted by the people of the State of Nebraska,

1 Section 1. Except as otherwise specifically provided by
2 law, the Public Service Commission shall have exclusive
3 jurisdiction over and the authority to regulate:

4 (1) Common carriers, generally, pursuant to sections
5 75-101 to 75-158;

6 (2) Grain pursuant to the Grain Dealer Act and the Grain
7 Warehouse Act and sections 89-1,104 to 89-1,108;

8 (3) Manufactured homes and recreational vehicles pursuant
9 to the Uniform Standard Code for Manufactured Homes and
10 Recreational Vehicles;

11 (4) Modular housing units pursuant to the Nebraska
12 Uniform Standards for Modular Housing Units Act;

13 (5) Motor carrier registration and safety pursuant to
14 sections 75-301 to 75-322, 75-369.03, 75-370, 75-371, 75-383, and
15 75-384;

16 (6) Pipeline carriers and rights-of-way pursuant to
17 sections 57-1301 to 57-1307 and 75-501 to 75-503;

18 (7) Railroad carrier safety pursuant to sections 74-918,
19 74-919, 74-1323, and 75-401 to 75-430;

20 (8) Telecommunications carriers pursuant to the
21 Intrastate Pay-Per-Call Regulation Act, the Nebraska
22 Telecommunications Universal Service Fund Act, the
23 Telecommunications Relay System Act, the Telephone Consumer
24 Slamming Prevention Act, and sections 75-109, 75-604 to 75-616,
25 86-801 to 86-811, 86-1001 to 86-1009, 86-1201 to 86-1222, 86-2201
26 to 86-2214, and 86-2301 to 86-2307;

27 (9) Transmission lines and rights-of-way pursuant to
28 sections 70-301 to 70-304 and 75-702 to 75-724; and

1 (10) Water service pursuant to the Water Service
2 Regulation Act.

3 Sec. 2. Section 28-515, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-515. (1) A person commits theft if he or she obtains
6 services, which he or she knows are available only for
7 compensation, by deception or threat or by false token or other
8 means to avoid payment for the service. Services include labor,
9 professional service, telephone service, electric service, cable
10 television service, or other public service, accommodation in
11 hotels, restaurants, or elsewhere, admission to exhibitions, and
12 use of vehicles or other movable property. When compensation for
13 service is ordinarily paid immediately upon the rendering of such
14 service, as in the case of hotels and restaurants, refusal to pay
15 or absconding without payment or offer to pay gives rise to a
16 presumption that the service was obtained by deception as to
17 intention to pay.

18 (2) A person commits theft if, having control over the
19 disposition of services of others to which he or she is not
20 entitled, he or she diverts such services to his or her own benefit
21 or to the benefit of another not entitled thereto.

22 ~~(3) For purposes of this subsection, telecommunications~~
23 ~~service shall include, but not be limited to, telephone service and~~
24 ~~cable television service, and device shall include, but not be~~
25 ~~limited to, instrument, apparatus, equipment, and plans or~~
26 ~~instructions for making or assembling the same.~~

27 ~~It shall be a Class II misdemeanor for any person to:~~

28 ~~(a) Knowingly make or possess any device designed to or~~

1 commonly used to obtain telecommunications service fraudulently
2 from a licensed cable television franchisee with the intent to use
3 such device in the commission of an offense described in subsection
4 ~~(1) of this section;~~

5 (b) Knowingly tamper with, interfere with, or connect to
6 any cables, wires, converters, or other devices used for the
7 distribution of telecommunications services by any mechanical,
8 electrical, acoustical, or other means without authority from the
9 operator of the service with the intent of obtaining
10 telecommunications service fraudulently; or

11 (c) Sell, give, transfer, or offer or advertise for sale
12 a device which such person knows or should know is intended to be
13 used for the purpose of obtaining telecommunications service
14 fraudulently.

15 Sec. 3. (1) It is unlawful for any person to:

16 (a) Knowingly make or possess any device designed to or
17 commonly used to obtain telecommunications service fraudulently
18 from a licensed cable television franchisee with the intent to use
19 such device in the commission of an offense described in subsection
20 (1) of section 28-515;

21 (b) Knowingly tamper with, interfere with, or connect to
22 any cables, wires, converters, or other devices used for the
23 distribution of telecommunications service by any mechanical,
24 electrical, acoustical, or other means without authority from the
25 operator of the service with the intent of obtaining
26 telecommunications service fraudulently; or

27 (c) Sell, give, transfer, or offer or advertise for sale
28 a device which such person knows or should know is intended to be

1 used for the purpose of obtaining telecommunications service
2 fraudulently.

3 (2) For purposes of this section:

4 (a) Telecommunications service includes, but is not
5 limited to, telephone service and cable television service; and

6 (b) Device includes, but is not limited to, instrument,
7 apparatus, equipment, and plans or instructions for making or
8 assembling the instrument, apparatus, or equipment.

9 (3) A violation of this section is a Class II
10 misdemeanor.

11 Sec. 4. Section 86-329, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 ~~86-329.~~ (1) ~~Any person who connects~~ It is unlawful for
14 any person:

15 (a) To connect any instrument, device, or contrivance
16 with any wire supplying or intended to supply electricity or
17 electric current or ~~connects~~ to connect any pipe or conduit
18 supplying gas or water, without the knowledge and consent of the
19 supplier of such products, in such manner that any portion thereof
20 may be supplied to any instrument by or at which electricity,
21 electric current, gas, or water may be consumed without passing
22 through the meter made or provided for measuring or registering the
23 amount or quantity thereof passing through it;

24 (b) To ~~and any person who knowingly uses~~ use or
25 knowingly ~~permits~~ permit the use of electricity, electric current,
26 gas, or water obtained unlawfully pursuant to this section;

27 (c) To reconnect ~~in the above-mentioned unauthorized~~
28 ~~ways, shall be deemed guilty of a Class III misdemeanor.~~

1 ~~(2) When electrical, gas, or water service has been~~
2 ~~disconnected pursuant to sections 70-1601 to 70-1615, any person~~
3 ~~who reconnects such service~~ without the knowledge and consent of
4 the supplier of such service if the service has been disconnected
5 pursuant to sections 70-1601 to 70-1615; or

6 (d) To willfully injure, alter, or by any instrument,
7 device, or contrivance in any manner interfere with or obstruct the
8 action or operation of any meter made or provided for measuring or
9 registering the amount or quantity of electricity, electric
10 current, gas, or water passing through it, without the knowledge
11 and consent of the supplier of the electricity, electric current,
12 gas, or water passing or intended to pass through such meter.

13 (2) Proof of the existence of any wire, pipe, or conduit
14 connection or reconnection or of any injury, alteration,
15 interference, or obstruction of a meter is prima facie evidence of
16 the guilt of the person in possession of the premises where such
17 connection, reconnection, injury, alteration, interference, or
18 obstruction is proved to exist.

19 (3) A violation of this section is a Class III
20 misdemeanor. shall be deemed guilty of a Class III misdemeanor.

21 Sec. 5. Section 70-301, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 70-301. Any public power district, corporation, or
24 municipality that is now or may hereafter be engaged in the
25 generation or transmission, or both, of electric energy for sale to
26 the public for light and power purposes or the production or
27 distribution, or both, of ethanol for use as fuel may acquire
28 right-of-way over and upon lands, except railroad right-of-way and

1 depot grounds, for the construction of pole lines or underground
2 lines necessary for the conduct of such business and for the
3 placing of all poles and constructions for the necessary adjuncts
4 thereto, in the same manner as railroad corporations may acquire
5 right-of-way for the construction of railroads. Such district,
6 corporation, or municipality shall give public notice of the
7 proposed location of such pole lines or underground lines with a
8 voltage capacity of thirty-four thousand five hundred volts or more
9 which involves the acquisition of rights or interests in more than
10 ten separately owned tracts by causing to be published a map
11 showing the proposed line route in a legal newspaper of general
12 circulation within the county where such line is to be constructed
13 at least thirty days before negotiating with any person, firm, or
14 corporation to acquire easements or property for such purposes and
15 shall consider all objections which may be filed to such location.
16 After securing approval from the Public Service Commission and
17 having complied with sections 86-301 to ~~86-331~~ 86-309 and section 4
18 of this act, such public power districts, corporations, and
19 municipalities shall have the right to condemn a right-of-way over
20 and across railroad right-of-way and depot grounds for the purpose
21 of crossing the same. The procedure to condemn property shall be
22 exercised in the manner set forth in sections 76-704 to 76-724.

23 Sec. 6. Section 86-306, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 ~~86-306.~~ (1) Any electric wire ~~All such wires~~ shall be
26 placed at least eighteen feet above all road crossings. Any
27 electric ~~7 and all such~~ poles and wires shall be so placed as not
28 to interfere with the public use of ~~any of~~ such highways, and if

1 ~~whenever~~ practicable, the poles shall be set upon the line of such
2 highways.

3 (2) If any person engaged in generating and transmitting
4 electric current for power or other purposes by means of wires
5 seeks to construct an electric wire Where such persons,
6 associations, or corporations seek to carry one or more of such
7 wires over and across the any railroad track or tracks, telegraph
8 wires, or ~~right-of-way~~ rights-of-way of any railroad company in
9 this state, where the same and the electric wire intersects and
10 crosses streets, highways, alleys, and other public thoroughfares,
11 or elsewhere, such persons, associations, or corporations shall
12 first endeavor to agree by a contract as to the manner and kind of
13 crossing to be constructed, which in no case shall be less than
14 twenty-seven feet above the top of the rails of any railroad
15 tracks, and the compensation, if any, to be awarded as damages. If
16 no agreement can be had with any such railroad company as to the
17 manner and kind of crossing, or compensation to be awarded, then
18 such persons, associations, or corporations may proceed to have the
19 same ascertained and determined in the manner set forth in sections
20 ~~76-704 to 76-724~~ sections 75-706 and 75-707 shall control the terms
21 and conditions of such construction or placement.

22 Sec. 7. Section 86-307, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 ~~86-307.~~ If any such person or persons, associations or
25 corporations, so engaged in generating and transmitting electric
26 current for power or other purposes by means of wires, shall
27 construct or place the same constructs or places electric wires
28 over the railroad tracks, telegraph wires, or ~~right-of-way~~

1 rights-of-way of any railroad company ~~without having first complied~~
2 ~~with the provisions~~ in violation of section 86-306, ~~such person or~~
3 ~~persons, associations or corporations,~~ upon conviction thereof
4 ~~shall be punished by a fine of not exceeding five hundred dollars~~
5 section 75-708 shall apply.

6 Sec. 8. Section 75-117, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 75-117. Any motor carrier or regulated motor carrier as
9 defined in section 75-302 or common carrier which fails, neglects,
10 or refuses to comply with any order of the commission shall be
11 guilty of a Class IV misdemeanor. Each day during which such
12 failure, neglect, or refusal continues shall constitute a separate
13 offense. If a motion is filed for a ~~rehearing~~ reconsideration or
14 to set aside the order or if the order is appealed, the carrier
15 shall not be subject to such penalty during the pendency of such
16 motion or such appeal.

17 Sec. 9. Section 75-132.01, Revised Statutes Supplement,
18 2001, is amended to read:

19 75-132.01. (1) Notwithstanding the provisions of section
20 75-131, the commission shall have exclusive original jurisdiction
21 over any action concerning a violation of any provision of (a)
22 ~~section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810~~ the
23 Intrastate Pay-Per-Call Regulation Act, the Nebraska
24 Telecommunications Universal Service Fund Act, the
25 Telecommunications Relay System Act, the Telephone Consumer
26 Slamming Prevention Act, and sections 75-109, 75-604 to 75-616,
27 86-801 to 86-811, 86-1001 to 86-1009, 86-1201 to 86-1222, and
28 86-2201 to 86-2214 by a telecommunications company or (b) sections

1 86-2301 to 86-2307 by an agency or political subdivision of the
2 state.

3 (2) After all administrative remedies before the
4 commission have been exhausted, any interested party to an action
5 may appeal in accordance with the Administrative Procedure Act.

6 (3) If the commission enters an order declining
7 jurisdiction under subsection (1) of this section, any interested
8 person may petition the district court of the county in which such
9 alleged violation has occurred. If it appears to the court, after
10 a hearing, that a provision of such sections has been violated, the
11 court may issue an injunction or other proper process to restrain
12 the telecommunications company and its directors, officers,
13 employees, or agents or the agency or political subdivision of the
14 state from continuing such violation and may order additional
15 relief. Any party to the case shall have the right to appeal the
16 decision of the district court to the Court of Appeals under the
17 rules provided by law for appeals in civil cases.

18 (4) For purposes of this section, telecommunications
19 company has the same meaning as in section 86-802.

20 Sec. 10. Section 75-137, Revised Statutes Supplement,
21 2000, is amended to read:

22 75-137. The procedure to obtain reversal, modification,
23 or vacation of an order entered by the commission shall be (1) by
24 filing a notice of appeal with the commission within thirty days
25 after the date of the mailing of a copy of the order by the
26 commission to the party appealing or (2) by filing a motion for
27 ~~rehearing~~ reconsideration within ten days after the date of the
28 mailing of a copy of the order by the commission to the party

1 appealing. If the commission overrules the motion for ~~rehearing~~
2 reconsideration, a notice of appeal shall be filed with the
3 commission within thirty days after the date of the mailing of a
4 copy of the order overruling the motion to the party appealing.
5 When the commission fails to enter an order ruling on the motion
6 for ~~rehearing~~ reconsideration within thirty days after such motion
7 is filed, the appeal may be perfected by filing a notice of appeal
8 before the commission enters an order ruling on the motion for
9 ~~rehearing~~ reconsideration, and the review by the court shall be the
10 same as if the commission had overruled the motion for ~~rehearing~~
11 reconsideration. Oral arguments on a motion for ~~rehearing~~
12 reconsideration shall be granted when requested and such arguments
13 shall be heard by a majority of the commission. An appeal shall be
14 deemed perfected and the court shall have jurisdiction of the cause
15 when a notice of appeal has been filed and the docket fee required
16 by section 33-103 has been deposited in the office of the executive
17 director of the commission. After being perfected, no appeal shall
18 be dismissed without notice, and no step other than the filing of
19 such notice of appeal and the depositing of such docket fee shall
20 be deemed jurisdictional.

21 Sec. 11. The Revisor of Statutes shall assign section 1
22 of this act to Chapter 75, article 1, sections 3 and 4 of this act
23 within sections 28-509 to 28-518, and sections 6 and 7 of this act
24 to Chapter 70, article 3.

25 Sec. 12. This act becomes operative on January 1, 2003.

26 Sec. 13. Original sections 28-515, 70-301, 75-117,
27 86-306, 86-307, and 86-329, Reissue Revised Statutes of Nebraska,
28 section 75-137, Revised Statutes Supplement, 2000, and section

1 75-132.01, Revised Statutes Supplement, 2001, are repealed.

2 Sec. 14. The following sections are outright repealed:

3 Sections 86-208 to 86-211, 86-330, and 86-331, Reissue Revised

4 Statutes of Nebraska.